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JUN 12 2000

SPECIAL PROGRAMS OFFICE  
DAC FOR PATENTS

In re Application of	:
Hankejh, et al.	: DECISION REFUSING STATUS
Application No. 09/326,258	: UNDER 37 CFR 1.47(a)
Filed: June 4, 1999	:
Attorney Docket No. SESSIO.P01	:

This is in response to the "Petition Under 37 CFR 1.47(a)," filed November 29, 1999.

The petition is **dismissed**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on June 4, 1999 without an executed oath or declaration and naming Damion L. Hankejh, Martin S. Rood, Hoa Ton-That and Jothan Frakes as a joint inventors.

Accordingly, on June 28, 1999, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, a filing fee, and a surcharge for their late filing.

In response, on November 29, 1999 (Certificate of Mailing date, November 24, 1999), a Petition under 37 CFR 1.47, petition fee of \$130.00, Combined Declaration and Power of Attorney, Statement Claiming Small Entity Status, filing fee of \$380.00, surcharge for late filing of \$65.00, Declaration of

Michael J. Lande with attached copy of assignment of Jothan Frakes and a request for a three (3) month extension of time were filed.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

Applicant lacks items (1) and (2) set forth above.

As to item (1), Petitioner states that [they] have been unable to locate Jothan Frakes and that "since June 1999 we have tried his old phone number and sent executable copies of power of attorney and verified statement documents for the captioned application to his old address." (Declaration of Michael J. Lande, Pg. 1). Petitioner should provide documents that evidence the attempts in locating Jothan Frakes, for example, a copy of an envelope showing that a letter sent to the last known address of the non-signing inventor was returned as undeliverable to the post office.

Furthermore, Petitioner states that [they] have attempted to send Jothan Frakes "executable copies of power of attorney and verified statement documents for the captioned application to his old address." (Declaration, Pg. 1). However, 37 CFR 1.47(a) requires an attempt be made to present the non-signing inventor with the application papers, including the specification, claims and drawings. As indicated in the Declaration of Michael J. Lande, an attempt to present Jothan Frakes with the application papers, including the specification, claims and drawings, has not been made.

As to item (2), the Combined Joint Declaration and Power of Attorney, filed November 29, 1999, includes the signature of Damion L. Hankejh on behalf

of himself and the non-signing inventor, Jothan Frakes. However, an oath or declaration in compliance with 37 CFR 1.63 and 1.64 signed by **all** of the available joint-inventors on behalf of themselves **and** Jothan Frakes is **REQUIRED**. See MPEP 409.03(a). Furthermore, when using separate oath or declarations for joint inventors, the signature block of **every** joint inventor should appear on each oath or declaration to be signed by a joint inventor.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents  
Box DAC  
Washington, DC 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Office of Petitions  
2201 South Clark Place  
Crystal Plaza 4, Suite 3C23  
Arlington, VA

Telephone inquiries related to this decision should be directed to Petitions Attorney Edward Tannouse at 703-306-9200.



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